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# PRELIMINARY DRAFT

## No. 3324

### PREPARED BY LEGISLATIVE SERVICES AGENCY 2009 GENERAL ASSEMBLY

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#### DIGEST

**Citations Affected:** IC 36-8-8.

**Synopsis:** 1977 pension fund disability benefit. Provides that a member of the 1977 police officers' and firefighters' pension and disability fund who receives a disability benefit based on a determination that the fund member has a Class 1 impairment or certain Class 2 impairments (disabled member) is entitled to receive the disability benefit for the remainder of the disabled member's life. (Currently, a disabled member receives a disability benefit until age 52; at 52, the disabled member's benefit is recomputed as a retirement benefit.) Provides that, upon becoming 52, the disabled member is entitled to receive a supplemental benefit equal to the greater of: (1) the retirement benefit that the disabled member would have received had the disabled member remained in service until retirement upon becoming 52; or (2) the retirement benefit earned by a fund member with 20 years of service; reduced by the amount of any disability benefit that the disabled member is entitled to receive for life. Provides that a fund member's retirement benefit is based on: (1) the member's years of active service; plus (2) if applicable, the period, not to exceed 20 years, during which the member received disability benefits.

**Effective:** July 1, 2009.



A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 36-8-8-12, AS AMENDED BY P.L.99-2007,  
2       SECTION 219, IS AMENDED TO READ AS FOLLOWS  
3       [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) Benefits paid under this  
4       section are subject to sections 2.5 and 2.6 of this chapter.

5       (b) If an active fund member has a covered impairment, as  
6       determined under sections 12.3 through 13.1 of this chapter, the  
7       member is entitled to receive the benefit prescribed by section 13.3 or  
8       13.5 of this chapter. A member who has had a covered impairment and  
9       returns to active duty with the department shall not be treated as a new  
10      applicant seeking to become a member of the 1977 fund.

11      (c) If a retired fund member who has not yet reached the member's  
12      fifty-second birthday is found by the PERF board to be permanently or  
13      temporarily unable to perform all suitable work for which the member  
14      is or may be capable of becoming qualified, the member is entitled to  
15      receive during the disability the retirement benefit payments payable  
16      at fifty-two (52) years of age. During a reasonable period in which a  
17      fund member with a disability is becoming qualified for suitable work,  
18      the member may continue to receive disability benefit payments.  
19      However, benefits payable for disability under this subsection are  
20      reduced by amounts for which the fund member is eligible from:

21          (1) a plan or policy of insurance providing benefits for loss of  
22          time because of disability;

23          (2) a plan, fund, or other arrangement to which the fund member's  
24          employer has contributed or for which the fund member's  
25          employer has made payroll deductions, including a group life  
26          policy providing installment payments for disability, a group  
27          annuity contract, or a pension or retirement annuity plan other  
28          than the fund established by this chapter;

29          (3) the federal Social Security Act (42 U.S.C. 401 et seq.), the  
30          Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States  
31          Department of Veterans Affairs, or another federal, state, local, or



1 other governmental agency;

2 (4) worker's compensation payable under IC 22-3; and

3 (5) a salary or wage, including overtime and bonus pay and extra  
4 or additional remuneration of any kind, the fund member receives  
5 or is entitled to receive from the member's employer.

6 For the purposes of this subsection, a retired fund member is  
7 considered eligible for benefits from subdivisions (1) through (5)  
8 whether or not the member has made application for the benefits.

9 (d) Notwithstanding any other law, a plan, policy of insurance, fund,  
10 or other arrangement:

11 (1) delivered, issued for delivery, amended, or renewed after  
12 April 9, 1979; and

13 (2) described in subsection (c)(1) or (c)(2);

14 may not provide for a reduction or alteration of benefits as a result of  
15 benefits for which a fund member may be eligible from the 1977 fund  
16 under subsection (c).

17 (e) Time spent receiving disability benefits, **not to exceed twenty**  
18 **(20) years**, is considered active service for the purpose of determining  
19 retirement benefits. ~~until the fund member has a total of twenty (20)~~  
20 ~~years of service. A fund member's retirement benefit shall be based~~  
21 ~~on:~~

22 (1) the member's years of active service; plus

23 (2) if applicable, the period, not to exceed twenty (20) years,  
24 during which the member received disability benefits.

25 (f) A fund member who is receiving disability benefits:

26 (1) under section 13.3(d) of this chapter; or

27 (2) based on a determination under this chapter that the fund  
28 member has a Class 3 impairment;

29 shall be transferred from disability to regular retirement status when the  
30 member becomes fifty-five (55) years of age.

31 (g) A fund member who is receiving disability benefits:

32 (1) under section 13.3(c) of this chapter; or

33 (2) based on a determination under this chapter that the fund  
34 member has a Class 1 or Class 2 impairment;

35 is entitled to receive a disability benefit for the remainder of the fund  
36 member's life **in the amount determined under the applicable**  
37 **sections of this chapter.**

38 SECTION 2. IC 36-8-8-13.5 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13.5. (a) This section  
40 applies only to a fund member who:

41 (1) is hired for the first time after December 31, 1989;

42 (2) chooses coverage by this section and section 12.5 of this  
43 chapter under section 12.4 of this chapter; or

44 (3) is described in section 12.3(c)(2) of this chapter.

45 (b) A fund member who is determined to have a Class 1 impairment  
46 and for whom it is determined that there is no suitable and available



work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to forty-five percent (45%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(c) A fund member who is determined to have a Class 2 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to twenty-two percent (22%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment plus one-half percent (0.5%) of that salary for each year of service, up to a maximum of thirty (30) years of service.

(d) For applicants hired before March 2, 1992, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to a monthly base benefit equal to the product of the member's years of service (not to exceed thirty (30) years of service) multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(e) For applicants hired after March 1, 1992, or described in section 12.3(c)(2) of this chapter, a fund member who is determined to have a Class 3 impairment and for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act, is entitled to the following benefits instead of benefits provided under subsection (d):

(1) If the fund member did not have a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund, the fund member is entitled to a monthly base benefit equal to the product of the member's years of service, not to exceed thirty (30) years of service, multiplied by one percent (1%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment.

(2) Except as provided in subdivision (5), a fund member is entitled to receive the benefits set forth in subdivision (1) if:

(A) the fund member had a Class 3 excludable condition under section 13.6 of this chapter at the time the fund member entered or reentered the fund;

(B) the fund member has a Class 3 impairment that is not related in any manner to the Class 3 excludable condition described in clause (A); and



- 1 (C) the Class 3 impairment described in clause (B) occurs after  
 2 the fund member has completed four (4) years of service with  
 3 the employer after the date the fund member entered or  
 4 reentered the fund.
- 5 (3) Except as provided in subdivision (5), a fund member is not  
 6 entitled to a monthly base benefit for a Class 3 impairment if:
- 7 (A) the fund member had a Class 3 excludable condition under  
 8 section 13.6 of this chapter at the time the fund member  
 9 entered or reentered the fund; and
- 10 (B) the Class 3 impairment occurs before the fund member has  
 11 completed four (4) years of service with the employer after the  
 12 date the fund member entered or reentered the fund.
- 13 (4) A fund member is not entitled to a monthly base benefit for a  
 14 Class 3 impairment if:
- 15 (A) the fund member had a Class 3 excludable condition under  
 16 section 13.6 of this chapter at the time the fund member  
 17 entered or reentered the fund; and
- 18 (B) the Class 3 impairment is related in any manner to the  
 19 Class 3 excludable condition.
- 20 (5) If, during the first four (4) years of service with the employer:
- 21 (A) a fund member with a Class 3 excludable condition is  
 22 determined to have a Class 3 impairment; and
- 23 (B) the Class 3 impairment is attributable to an accidental  
 24 injury that is not related in any manner to the fund member's  
 25 Class 3 excludable condition;
- 26 the member is entitled to receive the benefits provided in  
 27 subdivision (1) with respect to the accidental injury. For purposes  
 28 of this subdivision, the local board shall make the initial  
 29 determination of whether an impairment is attributable to an  
 30 accidental injury. The local board shall forward the initial  
 31 determination to the director of the PERF board for a final  
 32 determination by the PERF board or the PERF board's designee.
- 33 (f) If a fund member is entitled to a monthly base benefit under  
 34 subsection (b), (c), (d), or (e), the fund member is also entitled to a  
 35 monthly amount that is no less than ten percent (10%) and no greater  
 36 than forty-five percent (45%) of the monthly salary of a first class  
 37 patrolman or firefighter in the year of the local board's determination  
 38 of impairment. The additional monthly amount shall be determined by  
 39 the PERF medical authority based on the degree of impairment.
- 40 (g) Benefits for a Class 1 impairment **as determined under this**  
 41 **section** are payable ~~until for the remainder of the fund member~~  
 42 ~~becomes fifty-two (52) years of age:~~ **member's life.**
- 43 (h) Benefits for a Class 2 ~~and a Class 3~~ impairment are payable:
- 44 (1) for a period equal to the years of service of the member, if the  
 45 member's total disability benefit is less than thirty percent (30%)  
 46 of the monthly salary of a first class patrolman or firefighter in the



year of the local board's determination of impairment and the member has fewer than four (4) years of service; or

(2) ~~until the member becomes fifty-two (52) years of age for the remainder of the fund member's life~~ if the fund member's benefit is:

(A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or

(B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.

**(i) Benefits for a Class 3 impairment are payable:**

(1) for a period equal to the years of service of the member, if the member's total disability benefit is less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment and the member has fewer than four (4) years of service; or

(2) until the member becomes fifty-two (52) years of age if the member's benefit is:

(A) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or

(B) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service.

~~(h)~~ (j) Upon becoming fifty-two (52) years of age, a fund member with a ~~Class 1 or Class 2~~ impairment **determined under subsection (h)(1)** is entitled to receive the retirement benefit payable to a fund member with:

(1) twenty (20) years of service; or

(2) the total years of service **(including both active service and the period, not to exceed twenty (20) years, during which the member received disability benefits)** and salary, as of the year the member becomes fifty-two (52) years of age, that the fund member would have earned if the fund member had remained in active service until becoming fifty-two (52) years of age;

whichever is greater.

~~(i)~~ (k) Upon becoming fifty-two (52) years of age, a fund member who is receiving or has received a Class 3 impairment benefit that is:

(1) equal to or greater than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment; or



(2) less than thirty percent (30%) of the monthly salary of a first class patrolman or firefighter in the year of the local board's determination of impairment if the member has at least four (4) years of service;

is entitled to receive the retirement benefit payable to a fund member with twenty (20) years of service.

(f) (I) Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

(1) has had a covered impairment;

(2) recovers and returns to active service with the department; and

(3) within two (2) years after returning to active service has an impairment that, except for section 12.3(b)(3) of this chapter, would be a covered impairment;

is entitled to the benefit under this subsection if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under section 15 of this chapter that would have been applicable during the member's period of reemployment.

SECTION 3. IC 36-8-8-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23. Upon becoming fifty-two (52) years of age, a fund member receiving a Class 1 impairment benefit or Class 2 impairment benefit under section 13.5(h)(2) of this chapter is entitled to receive a supplemental benefit determined in STEP THREE of the following formula:**

**STEP ONE: Determine the greater of:**

(A) the retirement benefit payable to a fund member with twenty (20) years of service; or

(B) the retirement benefit payable to a fund member with the total years of service (including both active service and the period, not to exceed twenty (20) years, during which the member received disability benefits) and salary, as of the year the fund member becomes fifty-two (52) years of age, that the fund member would have earned if the fund member had remained in active service until becoming fifty-two (52) years of age.

**STEP TWO: Subtract from the benefit determined under STEP ONE the amount of any benefit determined under section 13.5 of this chapter that the fund member is entitled to receive for the remainder of the fund member's life.**

**STEP THREE: Determine the greater of the following:**

(A) The remainder determined under STEP TWO.

(B) Zero (0).



1       SECTION 4. [EFFECTIVE JULY 1, 2009] IC 36-8-8-12 and  
2       IC 36-8-8-13.5, both as amended by this act, and IC 36-8-8-23, as  
3       added by this act, apply to a member of the 1977 police officers'  
4       and firefighters' pension and disability fund who:

5       (1) after June 30, 2009, receives a benefit based on a  
6       determination that the member has a Class 1 or Class 2  
7       impairment, regardless of whether the determination was  
8       made before, on, or after June 30, 2009; and

9       (2) before July 1, 2009, has not had the member's disability  
10      benefit recalculated under IC 36-8-8-13.5 (as the section read  
11      before amendment by this act).

